

[ORAL ARGUMENT NOT SCHEDULED]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
Washington, DC 20001-2866

INTERCOLLEGIATE BROADCASTING)	
SYSTEM, INC.,)	
a Rhode Island Non-Profit Corporation,)	
)	
<u>Appellant,</u>)	
)	Case No. 11-1083
v.)	Docket No. 2009-1
)	CRB Webcasting III
COPYRIGHT ROYALTY BOARD,)	
LIBRARY OF CONGRESS,)	
)	Consolidated with
<u>Appellees,</u>)	Case No. 11-1103
)	
SOUNDEXCHANGE, INC.,)	
)	
<u>Movant-Intervenor for Appellee</u>)	
)	

APPELLANT'S NON-BINDING STATEMENT OF ISSUES TO BE RAISED

Counsel for Appellant IBS submits its description of issues it may brief in this appeal:

- Whether the Board erred in not fixing rates and terms for small non-commercial educational webcasters separate from its rates for large non-commercial educational webcasters, as required by Section 114(f)(2) of the Copyright Act, as construed in accord with Congress' intent in passing the Reg-

Flex Act, 5 U.S.C., chapter §§ 601-12, and P.L. 96-354 (1980), as amended by P.L. 104-721 (1996).

2. Whether the Board erred in setting rates and terms applicable to small non-commercial, educational webcasters without proper regard for the cumulative economic burdens needlessly imposed on such webcasters by the recordkeeping and reporting rules prescribed in its order of October 13, 2009, in RM-2008-7, see Final Rule, Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, 74 Fed. Reg. 52418 (Final Rule), *recon. pending*, on appeal, D.C. Cir. Case No. 09-1276.

3. Whether the Board improperly failed to consider IBS' defense against the rates and regulations in Case No. 11-1083 based on the cumulative impact of those rates and regulations taken in conjunction with the recordkeeping and reporting rules in Case No. 09-1276.

4. Whether the Board was constituted in accordance with the Appointments Clause of the Constitution, Article II, Section 2, Clause 2, and, if not, whether that statutory defect is curable by this Court.

5. Whether the Board abused its discretion in adopting rates and regulations in No. 11-1083 while the recordkeeping and reporting rules were not final by reason of the pending joint petition for clarification filed with the Board on October 28, 2009, in respect of the order in Case No. 09-1276.

6. Whether Section 803(d)(3) of the Copyright Act, as amended, 17 U.S.C. § 803(d)(3), lawfully assigned non-judicial duties to this Court constituted under Article III of the Constitution, and if so, whether that Congressional error is curable by this Court.

7. Whether the Board's final determination in Web III below was otherwise arbitrary, capricious, or an abuse of discretion.

Respectfully submitted,

/s/ William Malone

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